

ISAAC PASCHALIDIS,	.	Docket No. 1:20-CV-2804-LDH-
	.	RLM
Plaintiff,	.	
	.	
v.	.	Brooklyn, New York
	.	Thursday, September 8, 2022
THE AIRLINE RESTAURANT	.	12:02 p.m.
CORP. ET AL.,	.	
	.	
Defendants.	.	
.	
.	.	

APPEARANCES:

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P R O C E E D I N G S

THE COURT: This is Judge Mann on the line. I am conducting a telephonic discovery hearing in Paschalidis vs. The Airline Restaurant Corp., et al.; 1:20-cv-2804.

Let me start by thanking everyone for making yourselves available on relatively short notice.

I'm going to start by taking the roll call in the case. Who is on the line on behalf of the plaintiff?

MR. MAGNELLI: Good afternoon, Your Honor. Eric Magnelli from Brach Eichler, LLC, on behalf of plaintiff.

THE COURT: Welcome. And who is on the line on behalf of the defendants?

MS. MIETUS: Good afternoon, Your Honor. This is Danielle Mietus from Franklin, Gringer & Cohen, on behalf of the defendants.

THE COURT: All right. And is there anyone else on the line with either of you, whose appearance I should take at this point?

MR. MAGNELLI: None from plaintiff, Your Honor.

MS. MIETUS: None from the defendants.

THE COURT: All right. So I've set up this hearing in response to the defendant's letter motion to compel discovery from plaintiff. There are effectively two sets of discovery demands that defendant is seeking to compel from plaintiff.

1 The first one, concerns interrogatory 10 and
2 document requests 9 through 11, as well as interrogatories 13
3 and 14 and document request number 14. The latter is the
4 second issue. The first one concerns discovery demands, as
5 to concerning whether the plaintiff was employed by any --
6 defendant's employment during the six-year period preceding
7 the filing of this lawsuit or whether plaintiff was an owner
8 and/or shareholder of any other entity.

9 Let me begin by just getting clarification from
10 defense counsel. In footnote 1, you reference tax returns,
11 which would fall within the scope of the document demand
12 relating to this issue. And you indicate defendants reserve
13 their right to compel the production of the same. Do I
14 understand from that, that the defendants are not, at this
15 point, seeking to compel the production of tax returns?

16 MS. MIETUS: That would be correct, Your Honor. As
17 long as the plaintiff is able to produce some type of other
18 documents that would reflect the information that would be
19 contained in his own individual income tax returns.

20 THE COURT: Because I would note that the case that
21 you cite regarding the production and discovery of tax
22 returns, was one in which the court specifically granted a
23 protective order in a wage and hour case, and indicated that
24 before tax returns would be produced, the movant would have
25 to show both relevance and a compelling need, neither of

1 which have been adequately demonstrated, at this point.

2 So that is not an issue, but there is an objection
3 that's been raised by plaintiff. Plaintiff's position is
4 that he did not have other employment during the relevant
5 time period, and the plaintiff's position is that any
6 ownership interest in any other company, whether he owned or
7 was a shareholder, would be irrelevant to the issues in this
8 case. And the example that plaintiff's counsel gives, is
9 companies in which plaintiff may have had a passive or
10 minimal ownership interest, such as stock in Google.

11 I would like to cut through the back and forth on
12 this issue. I agree with plaintiff that the plaintiff's
13 ownership of stock in Google, or any other passive ownership
14 interest in a publicly traded company, would be totally
15 irrelevant. But I don't view the defendants as seeking that
16 kind of information. They're seeking information, even
17 though it's not expressly stated, but I construe it to mean,
18 is there any closely held entity, non-public corporation, in
19 which the plaintiff had an ownership interest? And if the
20 answer to that is yes, then that certainly could be relevant
21 to how much time he had to devote to his employment with the
22 defendants, if he was managing another business.

23 So let me ask plaintiff's counsel: During the six
24 years preceding the filing of this lawsuit, did the plaintiff
25 have any kind of an ownership interest in a closely held

1 entity, as opposed to a publicly traded corporation?

2 MR. MAGNELLI: Your Honor, I believe, and I don't
3 know all the details of it, but I believe he owns some
4 property.

5 THE COURT: And when you say he owns property, is
6 this property that he rents out?

7 MR. MAGNELLI: I believe so. You know, it's some
8 form of investment property, like a passive investment in
9 certain real estate. I believe that is the case.

10 THE COURT: And is he responsible for managing the
11 property in any way?

12 MR. MAGNELLI: No. Not to my understanding, Your
13 Honor, no.

14 THE COURT: Well, this is really an issue that the
15 parties should have been able to come to some agreement on,
16 rather than staking out extreme positions. And when I say,
17 extreme positions, I think that the defendants were entitled
18 to seek this information, and that the plaintiffs should have
19 provided a response. But whether the defendants are entitled
20 to the full scope of the documents that they've demanded, is
21 another matter.

22 I'm looking at the document demands, in which the
23 defendants are requesting all documents concerning and/or
24 reflecting all income of any kind that would include tax
25 returns. I think if the parties had reached an agreement on

1 what was within the scope of the relevant ownership interest,
2 they could have come to an agreement, in terms of how much
3 documentation has to be produced. If the plaintiff owns
4 property that he rents out, I think the defendants are
5 entitled to explore that and not simply to accept the
6 plaintiff's assertion that through counsel during this
7 proceeding, that he's not responsible for managing it,
8 because there may be a lot of activity required of him, even
9 if he isn't technically a manager of the property.

10 Mr. Magnelli, other than owning investment
11 property, does he have any other ownership interest in any
12 kind of business or entity, other than a publicly-traded one,
13 where he's a passive owner?

14 MR. MAGNELLI: The only other two, which defendants
15 are aware of, are two other entities in which he has a
16 minimal interest in and really has no responsibilities. And
17 the reason why defendants know about it, is because the
18 defendants are majority owners in those two companies.

19 THE COURT: Well, let me hear from Ms. Mietus.

20 MS. MIETUS: Thank you, Your Honor. The defendants
21 are involved in one other entity, as my understanding is,
22 with the plaintiff; however, I did attempt to kind of confer
23 with counsel on some of these issues and see if we could
24 reach some type of agreement. But we, unfortunately, were
25 not able to do so.

1 So certainly what Your Honor stated at the
2 beginning of the call, was really what the first category of
3 requests were geared towards. And exploring how plaintiff
4 essentially devoted his time, and whether other interests
5 that he may have had really detracted from any purported
6 responsibilities that he had at the defendants' restaurant.

7 With respect to some of the other entities that
8 counsel mentioned, I do believe that the plaintiff was also
9 potentially involved in operation of another restaurant as
10 well. And my clients don't have that, kind of, exact
11 information, which certainly they would be entitled to
12 explore.

13 THE COURT: And is this a restaurant in which the
14 defendants, or any of the defendants, have an interest as
15 well?

16 MS. MIETUS: I do not believe so, but I'm not
17 entirely certain.

18 THE COURT: Well, Mr. Magnelli, are you aware of
19 any other restaurant in which the plaintiff had any kind of
20 ownership or management responsibility?

21 MR. MAGNELLI: Absolutely not, Your Honor. In
22 fact, I think that is a completely made-up statement;
23 absolutely none. I don't know where that came from.

24 THE COURT: Well, I would prefer not to have to go
25 through each of the document demands and to specify, in

1 particular, what must be produced. It's somewhere between
2 objection, irrelevant, and we want any and all documents
3 concerning the plaintiff's interest in these entities. There
4 should be documents produced, such that one can ascertain
5 from documentation what the plaintiff's role was, and whether
6 it was an active or passive role. So can counsel work out
7 these issues on your own?

8 MR. MAGNELLI: Your Honor, this is Mr. Magnelli, we
9 can speak. I do think this establishes a dangerous
10 precedent, though, because this is now putting on the
11 employee the burden to prove the hours he worked, when an
12 employer has absolutely no time records. And where is the
13 line? Does he now have to produce daily calendars of kids'
14 soccer games, just to show whether or not?

15 The simple answer is, let defendants produce the
16 time cards, the time records, to see if he did or did not
17 work on that day. And they haven't done that, because they
18 clearly don't exist. And now, to try to have him divest --
19 to disclose every source of investment income he has, I think
20 that's a slippery slope, Your Honor. But I will definitely,
21 if Your Honor wants us to, further discuss this with counsel
22 and see if we can reach some sort of, you know, resolution.

23 THE COURT: Well, I disagree with your parade of
24 horrors. We're not talking about him turning over every
25 record that he might have that would bear on how he spent his

1 time. We're talking about ownership interest, and I
2 specifically said I excluded, in publicly traded companies,
3 in which it would clearly be a passive interest. But if
4 you're talking about someone who is an employee at a
5 restaurant, and if he's owning real estate, you know,
6 certainly he should have to turn over some information,
7 because owners of real estate have substantial
8 responsibilities. And I'm not ordering him to turn over
9 every single document relating to those properties, but there
10 should be some documentation that can be produced, from which
11 the defendants can determine whether or not this was merely
12 passive, or whether this, in fact, was a business in which
13 the plaintiff was actively participating.

14 And this is an unusual situation. Most wage and
15 hour cases involve people who are working for minimum wage
16 and they don't even own the home that they live in; they're
17 renters. So to suggest that requiring him to produce general
18 categories of ownership of businesses, I reject the notion
19 that this is a slippery slope.

20 And the fact that, you know, yes, the plaintiff, in
21 the absence of any records kept by the defendant employer, is
22 entitled to rely on his own recollection of his hours worked,
23 that doesn't mean that his recollection is irrebuttable.

24 All right. Now, let's turn to the issue of
25 damages, which is the second area of dispute. And the

1 defendants are asking for supplemental responses to
2 interrogatories 13 and 14, and to document request number 14.
3 So let me just get those in front of my, so I'm not flipping
4 back and forth.

5 Interrogatory 13 was, "Compute each category of
6 damages sought by plaintiff for each claim alleged in
7 plaintiff's amended complaint." The answer that was provided
8 is, "Unpaid regular wages of approximately \$100,000; unpaid
9 overtime wages of approximately \$200,000; back pay, front
10 pay, and lost benefits of approximately \$500,000, plus a
11 category interest, liquidated damages, emotional distress,
12 punitive damages, and statutory penalties," and that's in the
13 plaintiff's supplemental responses.

14 Now, defense counsel has cited several cases that
15 stand for the proposition that rule 26(a) -- this is just for
16 automatic disclosures or initial disclosures -- rule 26(a)
17 requires more than providing, without any explanation,
18 undifferentiated financial statements, and I'm quoting from
19 the Second Circuit's decision and design strategy, "It
20 requires a computation supported by documents." And
21 plaintiff's counsel has distinguished design strategy in
22 several of the other cases, by saying that in design
23 strategy, the plaintiff had omitted an entire category of
24 documents, lost profits; that is true. The issue in that
25 case was preclusion. We're now dealing with discoverability.

1 The Second Circuit did not rely solely on the fact
2 that the plaintiff had ever disclosed lost profits, but that
3 was the first rationale. The second was that, "Rule 26(a)
4 requires a computation, supported by documents." So
5 presumably in design strategy, if design strategy had
6 included a category of lost profits and said, \$10,000,000, it
7 follows under the second rationale of the Second Circuit,
8 that that would not be sufficient. There would have to be
9 some basis for that calculation.

10 The plaintiff's argument that the plaintiff does
11 not have the documents, that it was defendant's obligation to
12 retain common pay records, misses the mark. In a wage and
13 hour claim, when a plaintiff bases a damages calculation or
14 demand on the plaintiff's estimate of the number of the hours
15 worked, the plaintiff's counsel prepares a chart with a
16 calculation, based on those estimates. That is routinely
17 provided as part of initial disclosures. And in multiple
18 settlement conferences that the court has held, the plaintiff
19 produces those calculations.

20 I ask plaintiff's counsel, Mr. Magnelli, how did
21 you come up with the number \$100,000 in unpaid regular wages?
22 How did you come up with that number? Did you pluck it out
23 of the air, or did you do a calculation?

24 MR. MAGNELLI: Well, as I alluded to in the
25 opposition letter motion, I took the days and times that he

1 estimated that he worked, and did a multiplication. If this
2 resolves the issue, Your Honor, I'll be more than happy to
3 show my work.

4 THE COURT: I presume, and I know there are
5 programs that do that, so you don't actually have to do the
6 math, you just fill in the numbers. Do you have a chart?

7 MR. MAGNELLI: I used a pen and a paper and did
8 math. And if it helps defendants to move this case along, I
9 will show the work. I will supplement this interrogatory
10 answer with multiplication signs and additions, so they can
11 see the hours, the days. It's three paragraphs in the
12 complaint. I'll take those days and times, and I'll multiply
13 it by salary/hourly rate, and it will come up to the \$100,000
14 for the overtime, and obviously the rest is self-explanatory.
15 But I will gladly supplement it for them, if it will move
16 this case along.

17 THE COURT: Well, I'm not sure if you're suggesting
18 that you have documents that show how you came up with these
19 numbers, or whether you're saying you will come up with
20 documents to support these numbers; which is it?

21 MR. MAGNELLI: Your Honor, I don't have documents,
22 because the plaintiff does not have his time sheets or his
23 time cards. So he, by his recollection, told us, which is in
24 the complaint, the hours and days that he worked.

25 THE COURT: I understand that. I'm not asking

1 about the underlying records supporting his recollection.

2 I'm asking about the records supporting the calculation of
3 damages. Do you actually have a sheet of paper on which you
4 did the multiplication, or are you saying you will do that
5 now?

6 MR. MAGNELLI: At one point I know I had one on a
7 pen and paper. Whether it got scanned into the system and
8 saved, I can double-check. But if I don't still have that
9 piece of paper, I will, I mean, recreate it; it's not
10 difficult.

11 THE COURT: You know, the numbers that you've
12 provided in response to the interrogatory are so rough, that
13 if you are going to redo the damages calculation, you might
14 want to do it, rather than by hand, but use one of these
15 programs, you know, where you fill in the number of hours per
16 week, the number of weeks per year, what the hourly rate was,
17 and then you come up with a number, with the understanding
18 it's approximate, because at bottom, it's based on his
19 recollection. But I doubt that it would come up \$100,000 for
20 unpaid wages or \$200,000 for unpaid overtime. You're
21 actually going to come up with a specific sum, based on the
22 estimated number of hours as recalled by plaintiff.

23 MR. MAGNELLI: I will do that, Your Honor.

24 THE COURT: But you'll do that because that is what
25 the rule requires, and that is what the defendant is entitled

1 to. Now, you say that the defendant can recreate these
2 hours, but the defendant undoubtedly will say, plaintiff
3 didn't work the number of hours that he claims he did. So
4 they're going to come up with entirely different numbers, but
5 they're entitled to know how you generated the damages
6 numbers that you're alleging.

7 MR. MAGNELLI: And, Your Honor, I will do that,
8 obviously to the best of the ability, considering there are
9 no time records. But I will do that.

10 THE COURT: And with respect to the emotional
11 distress damages, that is the one area in which you can't
12 come up with an arithmetic calculation. That's an estimate
13 of what you believe the emotional damages are worth. But
14 nevertheless, the defendants are entitled to know what that
15 number is, because within this circuit there is a distinction
16 between garden-variety emotional distress versus extreme
17 emotional distress. What is the number that you're placing
18 on the plaintiff's emotional distress damages?

19 MR. MAGNELLI: Your Honor, and it's somewhere in
20 other discovery responses. There are no psychologists, there
21 is no psychiatrist, there are no doctors, so this would be
22 garden-variety emotional distress, which is, in my
23 understanding, a jury determination.

24 THE COURT: Well, it is, but the defendants are
25 entitled to know, what is the number that you are placing on

1 it?

2 MS. MIETUS: And, Your Honor, if I may, defendants'
3 request also encompasses, more specifically, the
4 interrogatories, the actual details of what the plaintiff's
5 alleged garden-variety emotional damages are. We have no
6 information; aside from he's seeking emotional damages.
7 There is no description anywhere in the amended complaints or
8 in any other discovery response.

9 THE COURT: Well, you're jumping ahead, now, to
10 interrogatory 14; I was still on 13, which was the
11 computation of each category of damages. So I will get to
12 number 14, but let's first talk about if the plaintiff were
13 now to make a demand, an emotional distress damages demand,
14 what would that amount be?

15 MR. MAGNELLI: Your Honor, I've never even thought
16 about that, because garden-variety emotional distress, in
17 every case I've ever been in, has always been a jury
18 determination. I can say it's \$10, I could say it's
19 \$1,000,000; the jury will determine that. I mean, there's
20 case law --

21 THE COURT: Well, if it's \$1,000,000, it's not
22 garden variety, so I can tell you right now, it's not
23 \$1,000,000.

24 MR. MAGNELLI: Right. And I know there's case law
25 that determines what, you know, the range of garden-variety

1 emotional distress damages are. But as defendants know, the
2 emotional distress damages are not based off of anything
3 medical -- medical records or a psychiatrist or a
4 psychologist.

5 THE COURT: That is true. But still, you're
6 required under rule 26(a), to provide a computation of each
7 category of damages, claimed by the disclosing party. So
8 regardless of who ultimately will be deciding that issue, if
9 the case were to go to trial, what is the value of the
10 emotional distress damages that the plaintiff is now
11 claiming? They're entitled to know that. You don't have to
12 provide a calculation as to how you got to that number, but
13 they are entitled to know what that number is.

14 MR. MAGNELLI: Your Honor, as I sit here right now,
15 I cannot provide a number, but I will supplement the answer,
16 in accordance with the case law and Your Honor's opinion.

17 THE COURT: All right. And similarly, for punitive
18 damages, now statutory penalties, I assume that's going to
19 come to the maximum, the cap under the New York Labor Law, so
20 we're probably talking about a total of \$10,000. Is that
21 correct, Mr. Magnelli, for the statutory penalties?

22 MR. MAGNELLI: Yes, Your Honor.

23 THE COURT: And punitive damages, you don't know
24 the number now?

25 MR. MAGNELLI: Again, Your Honor, that's a jury

1 decision. What my number is, is irrelevant, because that's
2 up to a jury to decide. I've never been in a situation where
3 I instruct the jury or a judge instructs the jury, as to what
4 the emotional damages' number is. There is a range that's
5 allowed under the law.

6 THE COURT: The issue isn't what you instruct the
7 jury, it's what's discoverable. We're talking now about
8 discovery, and under rule 26(a) of the Federal Rules of Civil
9 Procedure, the defendants are entitled to know your
10 evaluation, at this point, of your client's emotional
11 distress damages and the punitive damages. This is not a
12 question of what goes to the jury; it's noticed to the
13 defendants.

14 If, for example, you were to come back with
15 \$1,000,000 for emotional distress or let's say you said
16 \$100,000,000 for punitive damages, I'm sure there'd be in
17 limine motions they would want to file. So this is just a
18 question of notice, and you don't need to provide an
19 underlying calculation, but you need to provide, in effect,
20 what the demand is.

21 MR. MAGNELLI: Your Honor, I will research what the
22 allowable amount is, and I will provide defendants with a
23 supplemental answer. As I sit here today, I can't provide an
24 answer.

25 THE COURT: All right. And then moving on to

1 interrogatories. Did we just lose someone, or did someone
2 just join?

3 THE CLERK: Judge, I believe we just lost someone.

4 MR. MAGNELLI: I'm still here, Your Honor.

5 THE COURT: All right. So we'll have to wait for
6 Ms. Mietus to dial back in. Ms. Mietus?

7 MS. MIETUS: Yes. I apologize, I had some
8 technical issues.

9 THE COURT: All right. Well, we were just waiting
10 for you to dial back in. So I was about to question Mr.
11 Magnelli and you on interrogatory 14, which asks, "Identify
12 and describe in detail the irreparable injury and monetary
13 damages, including lost wages, lost fringe benefits, and
14 emotional distress that plaintiff claims he has suffered."
15 So plaintiff is going to be providing a supplemental response
16 to question number 13. That will include, in effect, his
17 demand for emotional distress damages and punitive damages.
18 There won't be any underlying calculation.

19 As for the other elements of his damages, he will
20 be providing the calculation of how he got to that number.
21 And I take it since the plaintiff, himself, did not keep any
22 records of his days worked and pay -- actually, I'm jumping
23 ahead, because now I'm already thinking about the document
24 demand. Let's just focus on interrogatory 14, "Identify and
25 describe in detail the damages." And I think that will be

1 covered by the response to number 13, and in terms of lost
2 fringe benefits, there will have to be some calculation as to
3 the estimate of lost fringe benefits. And describe in
4 detail, if we're talking about lost fringe benefits, there
5 are different fringe benefits, so those should be identified.

6 As far as his emotional injuries, we have a
7 statement on the record from counsel that the plaintiff did
8 not seek any professional help, so we're not going to have
9 any reference to money spent in therapy, but he should
10 describe his emotional injuries. Are we saying that he was
11 depressed? Are we saying that he suffered from insomnia? He
12 should describe what the emotional distress injuries
13 consisted of.

14 Turning now to document demand number 14, "Produce
15 all documents concerning plaintiff's claim for damages."
16 That will be counsel's calculations, and to the extent that
17 plaintiff has any underlying records that bear on any of
18 these damages, those should be produced. It's my
19 understanding from plaintiff's counsel's representations in
20 the letter and during this proceeding, that he doesn't have
21 any underlying documents.

22 All right. Let's set a deadline for the
23 supplemental submissions. I would note, and I should have
24 noted this at the outset, that today is September 8th, which
25 is the deadline for completion of fact discovery.

1 Defendant's letter motion on these discovery issues, at the
2 end sought additional time for discovery, but there was no
3 indication that that matter had been addressed with Mr.
4 Magnelli. And by the same token, Mr. Magnelli, in his
5 response, requested that the court rescind its order, sending
6 the case to mediation. That apparently has not been
7 discussed between counsel either.

8 So let's first talk about how much time Mr.
9 Magnelli needs, in order to complete this supplementation of
10 discovery, consistent with the court's rulings, and including
11 a period of time when counsel can confer with respect to the
12 first disputed issue, that is the plaintiff's ownership in
13 any closely held business. How much time are we talking
14 about?

15 MR. MAGNELLI: Your Honor, I think two weeks is
16 sufficient.

17 THE COURT: And I was going to propose two weeks.
18 Ms. Mietus, is that agreeable?

19 MS. MIETUS: Yes, Your Honor.

20 THE COURT: All right. So that would bring us to
21 September 22nd. And I think I would also like a joint status
22 report that this matter has been resolved. I'll give the
23 parties until September 28th to file a joint status report.

24 Now, court-annexed mediation was supposed to be
25 completed by September 15th. Have the parties even selected

1 a mediator?

2 MR. MAGNELLI: Plaintiff has, Your Honor. But I'm
3 still waiting on defendants to pick one.

4 THE COURT: Ms. Mietus?

5 MS. MIETUS: And defendants' counsel is proposing a
6 single mediator. And I conveyed to counsel that defendants
7 are certainly willing to participate in mediation; however,
8 the discovery issue is that given a deadline prior to the
9 mediation completion deadline, has to be worked out prior to
10 getting into any mediation issues. I will certainly provide
11 counsel with a response and propose a few mediators.

12 THE COURT: Well, the parties should not have
13 waited until a week before the deadline for completing
14 mediation to be having these discussions about who the
15 mediator is going to be. Ms. Mietus, do the defendants
16 consent to the plaintiff's proposed mediator?

17 MS. MIETUS: I will review. At this time I'm not
18 prepared to consent on the record. I do not recall who
19 counsel proposed as the mediator.

20 THE COURT: All right.

21 MR. MAGNELLI: Her name is Sarah Fuller; she's an
22 Eastern District of New York mediator.

23 THE COURT: Well, this is court-annexed mediation,
24 so everyone on the panel is who's been approved by the judges
25 of the Eastern District. But this really should have been

1 done long ago, and I take it both sides are in agreement that
2 discovery should be extended and the deadline for completing
3 mediation should be extended?

4 MR. MAGNELLI: Your Honor, I don't think it's
5 necessary to extend discovery, at this point. As of right
6 now, expert discovery ends December 9th. I don't see a
7 reason why we can't have this case wrapped up in three
8 months, and neither of us have indicated that we actually
9 need an expert. So we can just take the expert discovery
10 time and use it for fact discovery. That's my thought.

11 THE COURT: Well, that is not adhering to the
12 court's schedule. Because if there are not going to be
13 experts, then the court will vacate the expert discovery
14 schedule. Today is the last day for fact discovery. So the
15 question is, should fact discovery be extended? And then
16 there's a separate question of whether the court should
17 simply vacate the schedule for expert discovery. Ms. Mietus?

18 MS. MIETUS: Yeah. Given some of the issues that
19 we have encountered, certainly fact discovery needs to be
20 extended. The information that plaintiff will be producing
21 by September 22nd will be needed to move forward with
22 plaintiff's deposition.

23 THE COURT: And are defendants planning to rely on
24 experts?

25 MS. MIETUS: Not at this time, Your Honor. But

1 certainly we would like to, at this time, reserve our right
2 to utilize an expert.

3 THE COURT: All right. What I'm going to do, I'm
4 going to vacate the schedule set for expert discovery, since
5 it seems more likely than not, that the parties are not going
6 to be retaining experts. And I'll give the parties until
7 October 14th to complete fact discovery. And I'll give them
8 until October 28th to complete a court-annexed mediation. I
9 want you to select a mediator, and by that I mean agree upon
10 a mediator, within a week from today. And I'll give the
11 parties until November 3rd to submit a joint status report.

12 If the case is settling, you should indicate to the
13 court that as a result of court-annexed mediation or
14 otherwise, the case is settling. If it's not, you should
15 indicate that fact discovery has been completed, and if at
16 that point either side wants to retain an expert, you should
17 request that the court impose a new expert discovery
18 schedule. And in addition, if there are going to be any
19 dispositive motions, the parties should indicate whether or
20 not either side intends to make a dispositive motion.

21 All right. I think that covers everything that I
22 had intended to. Is there anything else that either of you
23 would like to address?

24 MR. MAGNELLI: Nothing for plaintiff, Your Honor.

25 MS. MIETUS: Nothing further from defendants.

1 THE COURT: All right. In that case, I'm going to
2 conclude this proceeding. Both of you please take care and
3 stay safe. Good-bye.

4 (Proceedings adjourned at 12:48 pm)

5
6 TRANSCRIBER'S CERTIFICATE

7 I certify that the foregoing is a correct
8 transcript from the electronic sound recording of the
9 proceedings in the above-entitled matter.

10
11 *Patricia J Dunham*

September 14, 2022

12
13 _____
14 Patricia J. Dunham

DATE

15 Legal Transcriber
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